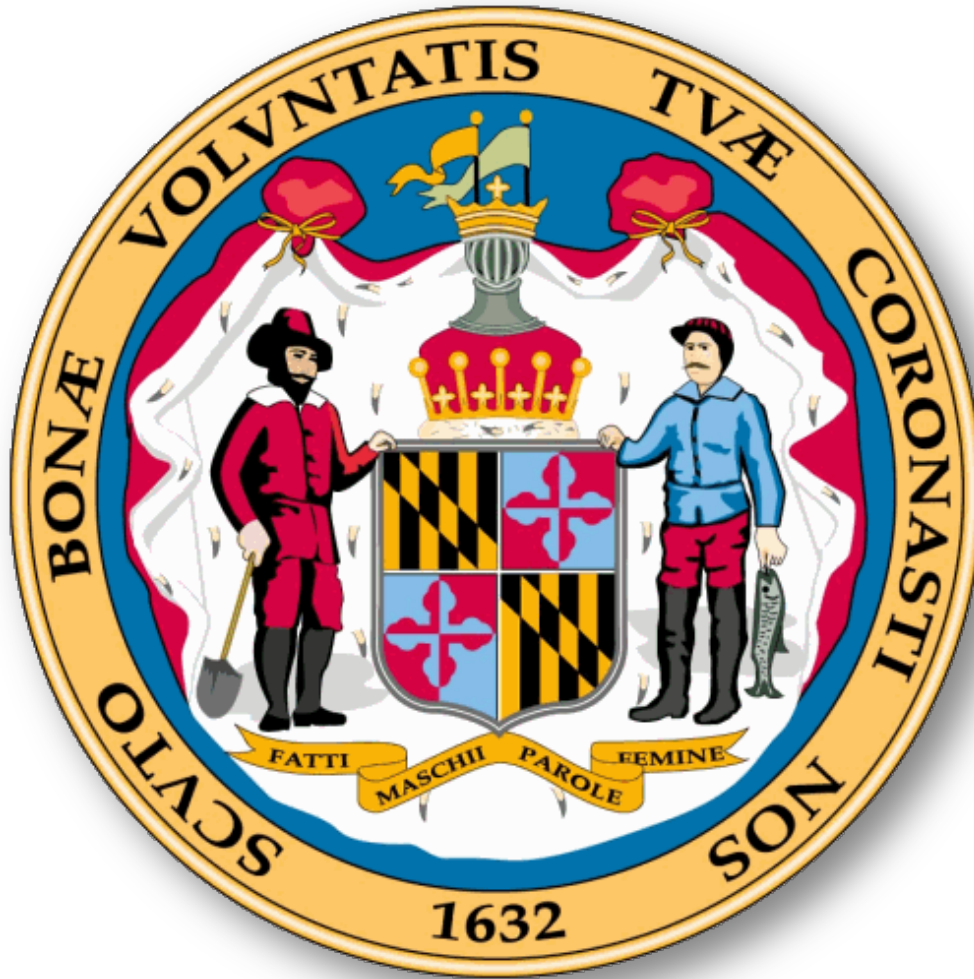


Justice Reinvestment Coordinating Council



Final Report

December 2015

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Department of Public Safety and Correctional Services

Wayne Webb, Acting Deputy Secretary of Operations
Patricia Goins-Johnson, Acting Commissioner, Division of Correction
Judith Hemler, Executive Deputy Director, Commitment
Cynthia Holley, Assistant Director of Case Management
Thomas P. Martin, Director, Reentry and Transition Services
Brenda Shell, Commissioner, Division of Pretrial Detention and Services
Joseph F. Clocker, Acting Director, Division of Parole and Probation
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Ruth Ogle, Administrator, Parole Commission
Tanya Smith, Program Manager, Parole Commission
Christina Lentz, Executive Director, Office of Grants, Policy, and Statistics
Jay Miller, Acting Director, Research and Statistics

Governor's Office

Adam Dubitsky, Director of Policy
Steven J. DeBoy, Sr., Deputy Legislative Office

Governor's Office of Crime Control and Prevention

Christopher Shank, Executive Director
Donald Hogan, Director of Legislation
Cara Sullivan, Policy and Planning Chief
Rachel Kesselman, Director of Special Projects
Jeffrey Zuback, Research Chief
Madison Getty, Policy Analyst

Judiciary

John P. Morrissey, Chief Judge, District Court of Maryland
Daniel M. Long, Administrative Judge, Somerset County Circuit Court, 1st Judicial Circuit
George M. Lipman, Associate Judge, District Court of Maryland, District 1
W. Michel Pierson, Administrative Judge, Baltimore City Circuit Court, 8th Judicial Circuit
Gerald V. Purnell, Administrative Judge, District Court of Maryland, District 2
Kelley E. O'Connor, Asst. Administrator, Government Relations
Suzanne Pelz, Deputy Director, Government Relations
Drew Snyder, Government Relations Representative

Lt. Governor's Office

Boyd K. Rutherford, Lt. Governor
Richard A. Tabuteau, Senior Advisor to Lt. Gov.

Maryland Association of Counties

Natasha Mehu, Policy Analyst
Jim Moran, Queen Anne's County Commissioner

Maryland Crime Victims' Resource Center

Russell Butler, Executive Director

Maryland Correctional Administrators Association

Dan Lasher, President
Terry Kokolis, Superintendent, Anne Arundel County

Maryland Office of the Public Defender

Becky Feldman, Chief Attorney, Collateral Review Division

Maryland Sheriff's Association

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Executive Summary

Over the last decade, Maryland has achieved large declines in both its violent and property crime rates, but only modest reductions in the state prison population. Maryland still incarcerates more than 20,000 offenders, costing Maryland taxpayers \$1.3 billion in corrections spending in FY2014. Meanwhile, critical recidivism reduction investments like specialty courts, drug treatment, and reentry programs have gone underfunded.

Seeking to maximize the public safety returns on Maryland's corrections spending, the 2015 General Assembly passed, and Governor Hogan signed into law, Senate Bill 602 establishing the bipartisan, inter-branch Justice Reinvestment Coordinating Council (Council) tasked with "develop[ing] a statewide framework of sentencing and corrections policies to further reduce the state's incarcerated population, reduce spending on corrections, and reinvest in strategies to increase public safety and reduce recidivism...."

Beginning in June 2015 and extending through the end of the calendar year, the full Council met six times and the three subcommittees of the Council met an additional four times each to analyze the state's criminal justice data, review research on sentencing and corrections practices, and develop policy recommendations for submission to state leaders.

The Council found that while the number of offenders admitted to prison is down 19 percent over the last decade in Maryland, more than half (58 percent) of prison admissions had underlying nonviolent offenses, including offenders sentenced directly from court and those sent to prison from community supervision. Almost 60 percent of all prison admissions represent failures of probation, parole, or mandatory release supervision. Many of these failures are due to technical violations of the conditions of supervision, like missing an appointment or failing a drug test, rather than for a new criminal conviction. Research demonstrates that for many offenders, including drug offenders, supervision violators, and first-time offenders, incarceration can increase recidivism when compared with noncustodial sanctions.¹

There is also a growing consensus in criminological research that adding months and years onto prison stays has little or no impact on recidivism.² The Council noted that despite this research, offenders in Maryland are spending 23 percent longer behind bars—seven additional months on average—than they were a decade ago. This increase in time served is largely due to longer sentences handed down from the courts (up 25 percent). Additionally, parole release rates remain low: just 37 percent of offenders in Maryland are paroled and those offenders who are granted parole are released, on average, nine months after their eligibility date.

Finally, the Council found that supervision resources are not sufficiently focused on the offenders who are most likely to return to crime. Seventy percent of the offenders on probation and 65 percent of the offenders on parole and mandatory supervision are classified as moderate or low risk to reoffend. Low-risk offenders, those most likely to stabilize and remain law-abiding, serve considerably longer on parole and mandatory supervision than high-risk offenders prior to a successful discharge.

Based on this analysis of state data, the Council developed a comprehensive set of recommendations to hold offenders accountable, reduce the state's prison population and corrections spending, and improve recidivism outcomes. If adopted, the Council's consensus recommendations are projected to reduce Maryland's prison population by 3,930 inmates over the next 10 years, averting \$247 million in corrections spending. The Council strongly recommends that all these dollars be reinvested into programs and practices proven to protect public safety and reduce recidivism.

Background

The Justice Reinvestment Coordinating Council, as established by Senate Bill 602 (Chapter 42), is a diverse, inter-branch, bipartisan group of criminal justice stakeholders from across the state. In addition to legislators, the Council consists of representatives from the judiciary, prosecutorial and defense bars, local and state corrections, law enforcement, and reentry services. The Council is chaired by Christopher Shank, Executive Director of the Governor's Office of Crime Control and Prevention.

Members of the Justice Reinvestment Coordinating Council

Sam J. Abed	Secretary of the Department of Juvenile Services
Caryn York-Aslan	Job Opportunities Task Force
Delegate Erik L. Barron (D)	House of Delegates, District 24
Sheriff Troy D. Berry*	Charles County
LaMonte E. Cooke	Queen Anne's County Detention Center
Paul DeWolfe	Office of the Public Defender
Delegate Kathleen Dumais (D)	House of Delegates, District 15, Judiciary Vice-Chair
David Eppler	Attorney General's Office
Robert L. Green	Montgomery County Department of Correction and Rehabilitation
Judge Paul A. Hackner	Anne Arundel County Circuit Court (Ret)
Senator Michael Hough (R)	State Senate, District 4
Judge Diane O. Leasure*	Howard County Circuit Court (Ret)
Delegate Michael Malone (R)	House of Delegates, District 33
Tim Maloney	Attorney
Stephen T. Moyer	Secretary of the Department of Public Safety and Correctional Services
Senator Nathaniel McFadden (D)	State Senate, District 45, President Pro Tem
Sheriff Doug Mullendore	Washington County
Judge Joseph Murphy	Maryland Court of Appeals (Ret)
Senator Douglas Peters (D)	State Senate, District 23
Christopher B. Shank	Executive Director, Governor's Office of Crime Control and Prevention, Chairman
Scott Shellenberger	State's Attorney, Baltimore County
Delegate Geraldine Valentino-Smith (D)	House of Delegates, District 23A
Senator Bobby Zirkin (D)	State Senate, District 11, Judicial Proceedings Chair

** Sheriff Troy Berry and Judge Diane Leasure were initial members of the Justice Reinvestment Coordinating Council. Judith Sachwald, former Director of the Division of Parole and Probation, and Joe Clocker, Acting Director, Division of Parole and Probation served as representatives for Sec. Moyer.*

Since June, the full Council met six times, with four additional meetings for each of the three subcommittees, to analyze the trends in Maryland's prison population, study research about what works to reduce recidivism, review best practices and models in sentencing and corrections from other states, and engage in in-depth discussions to develop a comprehensive package of reforms.

To provide the opportunity for detailed analysis and discussion of specific issues, Council members split into three subgroups:

- Sentencing, chaired by Senator Bobby Zirkin, Chairman of Judicial Proceedings Committee;
- Release and Reentry, chaired by Delegate Kathleen Dumais, Vice-Chair of the Judiciary Committee; and
- Supervision, chaired by Senator Michael Hough.

As charged by Senate Bill 602, the Council sought input from a wide range of stakeholders, holding four stakeholder meetings in Cambridge, Catonsville, Annapolis, and Suitland. At these gatherings, the Council received testimony from individuals representing faith-based groups, reentry and community mediation organizations, civil rights advocates, local labor unions, and communities disproportionately represented in the criminal justice system, among others. Additionally, the Council hosted two roundtable discussions, in Upper Marlboro and Millersville, to solicit the views and key priorities of crime victims, survivors, and victim advocates. The Council subgroups also received input from members of the judiciary, the Parole Commission, behavioral health experts, and other criminal justice stakeholders throughout their policy development work.

The Council received technical assistance from the Public Safety Performance Project of The Pew Charitable Trusts and its partner, the Crime and Justice Institute at Community Resources for Justice. This assistance was provided as part of the Justice Reinvestment Initiative (JRI), a collaboration between Pew and the U.S. Department of Justice, Bureau of Justice Assistance. JRI has provided similar assistance to over two dozen states by helping to analyze sentencing and corrections data in order to develop research-based, fiscally sound policy options that protect public safety, hold offenders accountable, and contain corrections costs.

Justice Reinvestment in the National Context

In recent decades, state prison populations expanded rapidly across the country, and state officials have spent an increasing share of taxpayer dollars to keep pace with soaring prison costs. From the mid-1980s to the mid-2000s, spending on corrections was the second fastest growing state budget category, behind only Medicaid.³ In 2014, one in 15 state general fund dollars went to corrections.⁴

The national crime rate has been falling since the early 1990s, and is now at its lowest level since 1968.⁵ However, the strongest research credits prison growth with at most one-quarter to one-third of the crime drop since the crime rate peaked in the early 1990s. Other major factors include better policing, changing demographics, increased private security, and improved theft prevention technologies.⁶ In short, the increased use of incarceration had an important but minority role in improved public safety.

Consider Florida and New York: over the past 20 years, both states experienced massive and identical crime rate reductions of 54 percent. New York achieved that reduction while reducing its imprisonment rate by 24 percent, while Florida expanded its use of prison by 31 percent—costing

taxpayers hundreds of millions of dollars a year.⁷ New York is not alone. In the last five years, 32 states, including Maryland, reduced both their imprisonment and crime rates.⁸



State experiences like these, alongside dramatic reforms in law-and-order states like Texas and supportive public opinion,⁹ have combined with state budget pressures to create a growing national conversation that puts prison spending under greater scrutiny than ever before. For the better part of the past four decades, the most common question that policymakers have asked about their state corrections budgets was, “How many more prisons do we need?” Today, state leaders from both parties are asking a much tougher question: “How do we get taxpayers a better public safety return on their corrections dollars?”

Many states have adopted policies to rein in the size and cost of their corrections systems through a “justice reinvestment” strategy. Georgia, Kentucky, Mississippi, North Carolina, Oregon, Pennsylvania, Texas, Utah, and many others have implemented reforms to protect public safety and control corrections costs. These states revised their sentencing and corrections policies to focus state prison beds on violent and career offenders and then reinvested a portion of the savings from averted prison growth into more cost-effective strategies to reduce recidivism.

In 2011, policymakers in Georgia faced a projected eight-percent increase in the prison population over the next five years at a cost of \$264 million. Rather than spend more taxpayer dollars on prisons, Georgia leaders looked for more cost-effective solutions. The state legislature unanimously passed a set of reforms that controlled prison growth through changes to drug and property offense statutes, and improved public safety by investing in local community supervision, sanctions, and services.¹⁰ Between 2012 and 2014 (the most recent year with recordable crime data), the state crime rate has fallen three percent and the sentenced prison population has declined three percent, giving taxpayers better public safety at a lower cost.¹¹

In these and other states, working groups studied the evidence and research about what works to improve public safety and integrated the perspectives of the three branches of government and key system stakeholders. This data-driven, inclusive process resulted in wide-ranging, evidence-based innovations to the laws and policies that govern who goes to prison, how long they stay, and whether they return.

Based on the solid body of research on crime and incarceration, discussed in greater detail below, many states have implemented a variety of reforms to reduce prison admissions and length of stay, with the goal of controlling corrections spending and reducing recidivism. These reforms include:

- Reduction of sentence lengths (including Alabama, Arkansas, Georgia, Kentucky, Mississippi, North Carolina, Ohio, Oregon, South Carolina, South Dakota, and Utah);
- Reclassification of offense types (including Alabama, California, Colorado, Delaware, Kentucky, Montana, South Carolina, and Washington);
- Expansion of prison alternatives for lower-level offenders (including Georgia, Mississippi, Oregon, and Utah);
- Revision of mandatory minimum laws (including Michigan, New York, and Oregon);
- Expansion of earned time opportunities for inmates (including Colorado, Kansas, Pennsylvania, South Carolina, and Washington); and
- Alteration of parole policy and practice to create more certainty and to reduce length of stay (including Mississippi, Pennsylvania, and Texas).

Key Findings in Maryland's Corrections System

Research on Imprisonment

A growing body of criminological research demonstrates that prison terms are not more likely to reduce recidivism than noncustodial sanctions.¹² For some offenders, including drug offenders, technical violators, and first-time offenders, studies have shown that prison can actually increase the likelihood of recidivism.¹³ There is also growing evidence that, for many offenders, adding days, months, or years to prison sentences has no impact on recidivism.¹⁴ These findings have encouraged policymakers across the country to question whether long prison terms are the most effective way to improve public safety.

In particular, analyses over the past few decades show that long prison sentences associated with drug use and dealing are an ineffective and expensive response to drug addiction and drug-related crime. Across the country, many states have been coping with a surge in heroin abuse and related deaths, and research indicates that imposing lengthy prison terms has little impact on recidivism,¹⁵ achieves a poor return on government spending,¹⁶ and fails to disrupt drug markets.¹⁷

Rather, the most effective response to drug addiction and drug-related crimes includes a combination of: (1) targeted law enforcement to curtail trafficking and limit the emergence of new drug markets; (2) alternative sentencing to divert nonviolent drug offenders from costly incarceration to evidence-based supervision; (3) treatment to reduce dependency and recidivism; and (4) prevention efforts that can help identify individuals at high risk for addiction.¹⁸

Maryland's Prison Data

Over the past six months, the Council conducted an extensive review of Maryland's sentencing and corrections data to better understand and evaluate the state's public safety system and corrections spending in light of this body of research. During that process, the Council found many bright spots, including large declines in violent and property crime and a five-percent decline in the prison population over the last decade.

Baltimore City has experienced a recent increase in homicides. Many large cities have seen continued declines in their homicide rates this year, but Baltimore City is among the list of those experiencing a tragic and troubling spike in 2015. Police leaders are offering a wide range of

possible explanations though many experts agree that it is still too soon to diagnose the causes with any certainty.¹⁹

While the longer-term crime decline and simultaneous decline in the prison population in Maryland should be lauded, the Council identified several areas in which Maryland could more effectively focus its corrections resources in order to improve public safety. To examine these trends, the Council reviewed data on the two variables that cause prison populations to rise and fall: 1) how many offenders are admitted to prison, and 2) how long those offenders remain behind bars.

Unless otherwise stated, the data analyses presented below were conducted by Pew using data from the Department of Public Safety and Correctional Services.¹

Admissions

Although admissions to prison declined by 19 percent over the last decade, underlying trends reveal that this admissions decline is neither statewide nor necessarily focused on the lowest-level offenders.

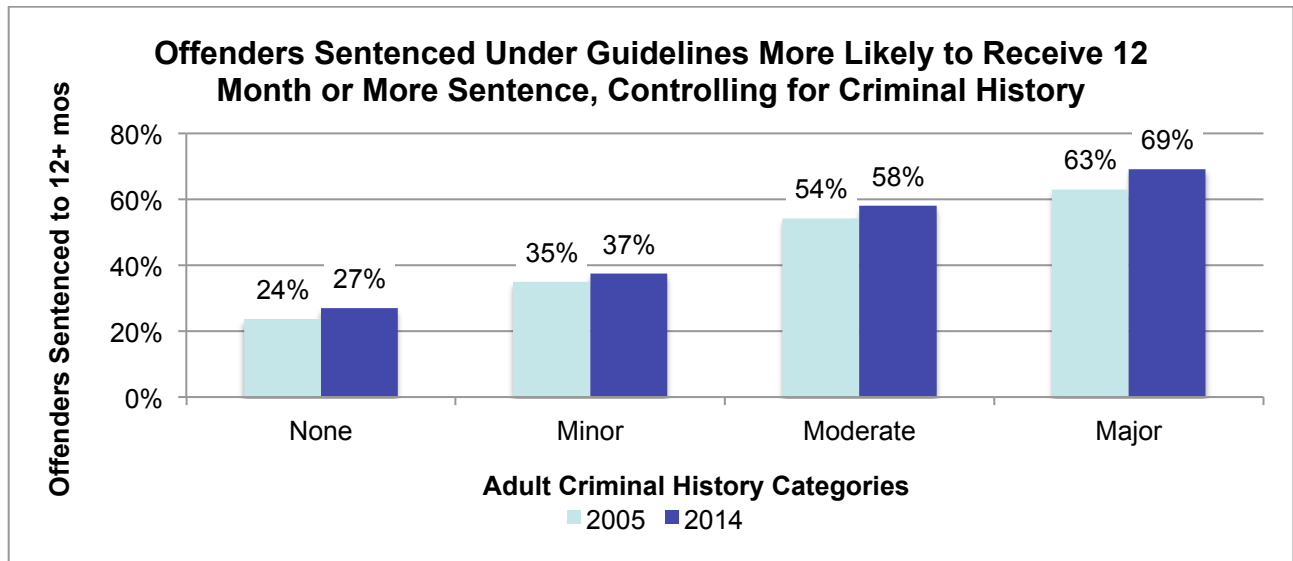
Decline in admissions largely is driven by Baltimore City.

Overall, the admissions decline was driven by a 43 percent drop in offenders admitted to prison from Baltimore City. Admissions from all other jurisdictions across the state increased four percent over the last decade. In Baltimore City, the decline was mostly driven by a large drop in the number of drug offenders sentenced to prison (down 59 percent) and revoked to prison from probation (down 73 percent). This, in turn, was the result of fewer drug arrests (down 41 percent from 2003 to 2012) and criminal cases terminated (down 35 percent in Baltimore City Circuit Court).²⁰ As in many states and cities across the country, this decline in drug arrests and use of incarceration is correlated with a decline in both reported violent (down 25 percent) and property crime (down 15 percent).²¹

Imprisonment has increased relative to noncustodial sentencing options.

While the number of people entering prison declined, the chance that the courts will sentence convicted offenders to prison increased, according to data from the Maryland State Commission on Criminal Sentencing Policy (the Sentencing Commission). Over the last decade, data revealed that an increasing percentage of offenders for whom a sentencing guidelines worksheet was submitted received an incarceration sentence, either to jail or prison. This upward trend in the likelihood of incarceration holds true across all criminal history categories. Although drug offenders are least likely to receive a sentence of incarceration, over two-thirds of them do, and three-quarters of other nonviolent offenders receive a sentence of incarceration. This trend may have contributed to the growth in prison admissions from other jurisdictions across the state. It may also explain why, compared to the national average, Maryland has a larger share of its offender population incarcerated than other states (41 percent incarcerated and 59 percent in the community, versus 30 percent and 70 percent nationally).²²

¹ These analyses are focused on sentenced offenders with a total incarceration sentence of 12 months or more to be served at the state prison, and exclude sentenced offenders with less than 12 months to serve, and offenders sentenced to serve between 12 and 18 months in local detention facilities.



Nonviolent offenders make up a large share of prison admissions each year.

The majority (58 percent) of offenders admitted to prison in 2014 were sentenced for nonviolent crimes.ⁱⁱ Five of the top 10 offenses at admission were nonviolent, including the number one offense (possession with intent to distribute narcotics). Although there was an overall decline in the total number of prison admissions for drug offenses in the last decade, drug offenders still constitute a substantial portion of the prison population. Admissions for other types of nonviolent offenses have declined more slowly or, in some cases, even increased in recent years. For example, prison admissions for felony theft, one of the top 10 crimes at admission, increased eight percent over the last decade.

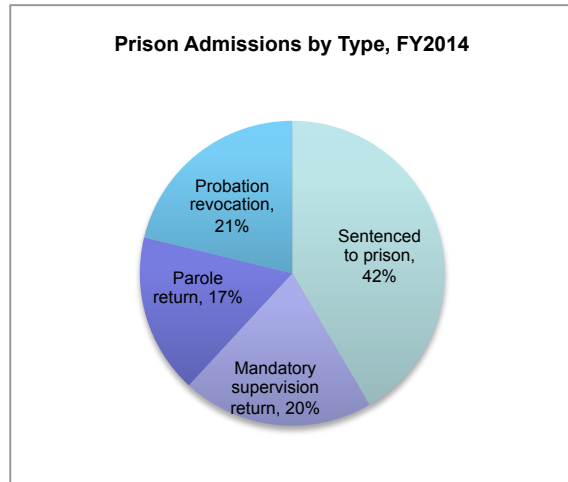
Top 10 Offenses at Admission in FY2014 Newly Sentenced Prisoners Admitted to Prison			
Offense	2005	2014	% Change
Possession w/ Intent to Distribute Narcotics	964	462	-52%
Assault-2nd Degree	342	340	-1%
Robbery with a Deadly Weapon	248	281	13%
Narcotics Distribution	285	240	-16%
Robbery	172	229	33%
Theft Felony	204	221	8%
Assault-1st Degree	245	214	-13%
Burglary-1st Degree*	NA	210	
Possession of a Controlled Dangerous Substance (Excluding Marijuana)	178	144	-19%
Murder-1st Degree	66	132	100%

*Burglary-1st Degree was not coded in the same way in 2005 and therefore cannot be compared to current numbers

**Shaded offenses are nonviolent

ⁱⁱ For the purposes of this data analysis, “nonviolent” offenses are defined as all other crimes excluding crimes against a person.

Because drug offenders sentenced to prison in Maryland are disproportionately black, the decline in drug offenders committed to prison led to a small decline in the share of prison admissions made up of black offenders (74 percent to 70 percent).²³ This reduced figure is still disproportionate to the overall percentage of black residents in the Maryland state population (30 percent).²⁴



Offenders on supervision make up a large share of prison admissions annually.

Offenders entering prison from probation and post-release supervisionⁱⁱⁱ are a major driver of Maryland's prison population. Nearly 60 percent of admitted prisoners were on probation or post-release supervision prior to entering prison.

The Council also reviewed the types of violations that drive returns to prison from community supervision. Many probation and post-release supervision returns to prison are triggered by one or more technical violations of supervision conditions, such as missing a meeting with a parole or probation

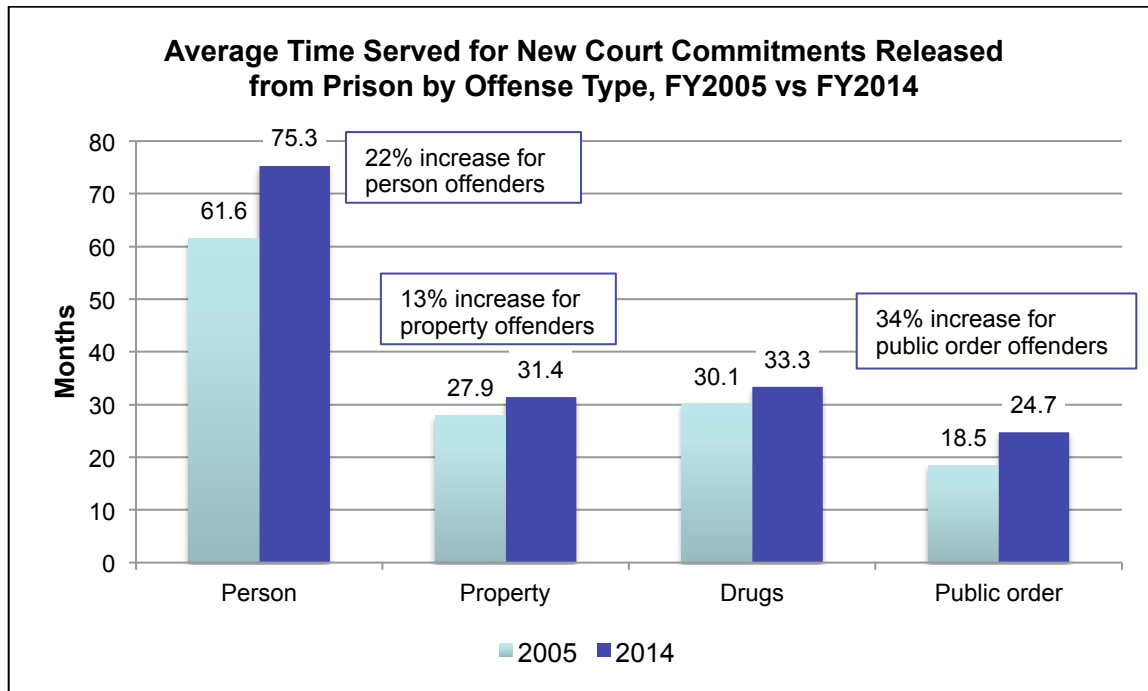
agent, failing a drug test, or being arrested but not convicted for a new crime. In FY2014, nearly three-quarters of parole and mandatory supervision returns to prison were for technical violations. This trend was less pronounced for probation revocations, but still over 40 percent of probation revocations to prison were for technical violations during the same year.

Length of Stay

While admissions present a mixed picture of growth and decline for different offense types, increased length of stay in prison has been a consistent driver of the prison population. Over the last decade, the amount of time all offenders spend in prison increased by 23 percent, or 6.7 months on average. For offenders sentenced directly from court, not including revocations to prison, time served in prison increased 30 percent from a decade ago, while probation revocations spend 25 percent longer. Length of stay remained relatively flat for post-release supervision returns.

Length of stay is up across all offense types. Property offenders released in FY2014 served 13 percent longer in prison than those released in FY2005, and public order offenders served 34 percent longer. For some offenses, time in prison has increased by just a few months. However, even just a few months longer in prison can add up to significant costs when multiplied by the thousands of offenders entering and exiting prison every year.

ⁱⁱⁱ Probation supervision includes supervision for the following disposition types: **Probation Before Judgement:** Disposition under which a court defers imposition of a verdict but may require compliance with conditions for a specified period of time; and **Probation After Judgement:** Disposition under which a court defers imposition of a sentence or suspends the sentence and releases an individual under certain conditions for a specified period of time. Post-release supervision includes supervision for the following two release types: **Parole:** Discretionary, conditional release from prison granted by the Maryland Parole Commission; and **Mandatory Release:** Non-discretionary release from prison required by law after a criminal offender has served his or her sentence, less diminution of confinement credits.



The Council examined Maryland's long length of stay in prison and identified two main factors driving it: sentence lengths and parole practices.

Sentence lengths are on the rise.

The average sentence length for newly sentenced prisoners increased 25 percent in the last decade, while revoked probationers' average sentences rose 29 percent. Growth in average sentence length took place across all offense types. This upward trend varies somewhat across the state, but the majority of Maryland's jurisdictions increased their average sentence length over the last decade.

Probationers in Maryland receive a suspended sentence either in lieu of or to follow a period of incarceration. According to data from the Sentencing Commission, the average suspended sentence term has increased by 30 percent in the last decade. In many cases, this long suspended sentence is in addition to a non-suspended incarceration sentence. Offenders receiving both a prison sentence and an additional suspended sentence have seen increases in each category (25 percent increase for the prison sentence and 58 percent increase for the suspended sentence). These sentencing trends are not in alignment with the research showing that longer sentences do not reduce recidivism.

Less than half of offenders are paroled, and those who are experience delays.

While sentence lengths have risen for most groups of offenders over the last decade, they are not Maryland's only driver of time served in prison. Release practices also play an important role. While the Parole Commission now releases a larger share of offenders than in the past, only 37 percent of offenders released are released through parole (up from 30 percent in FY2005). Drug offenders are most likely to be paroled, with 56 percent of this group released on parole. Less than half of all other nonviolent offenders are released on parole. Those offenders who are released on parole serve an average of nine months past their initial eligibility date. The gap between parole eligibility and release is greater for many nonviolent parolees than it is for violent parolees; offenders serving time for many common nonviolent offenses are released after serving roughly 40 percent of their sentence on average, despite being initially eligible at 25 percent, while many violent parolees are

released soon after becoming eligible at 50 percent of their sentence length. A file review of offenders released on parole revealed that the extended prison terms are the result of multiple factors, including delays receiving programming in prison and decisions to postpone release until after the parole eligibility dates.

Both increased sentences and low parole release rates have played a role in black offenders serving longer in Maryland's prisons than white offenders. Sentences have grown 28 percent for black offenders compared to 15 percent for white offenders. Based on sentencing guidelines worksheet data, black offenders in Maryland who were sentenced to prison were sentenced to 36 months longer than white offenders sentenced to prison in FY2014, controlling for broad offense type and adult criminal history category. While black offenders are also less likely to receive parole for the same offenses, this could be due to a number of factors including the extent to which certain sentences are ineligible for parole (for example, drug mandatory minimums) and the extent to which parole release decisions are based on the static factors in the Parole Commission's risk assessment (like age at first arrest, age at current arrest, and criminal history) which could disproportionately affect black offenders, rather than the dynamic factors in the risk assessment (like participation in programming in prison). These trends have led to black offenders serving an average of 31 percent longer in prison than white offenders in FY2014.

Combined, these length of stay trends resulted in a prison population that declined over the last ten years more slowly than the decline in admissions. In other words, although admissions decreased, longer sentences and low parole release rates slowed the state's overall prison population decline.

Research on Community Corrections

Nearly all offenders entering Maryland prisons eventually return to their homes and communities. Over the last 30 years, a growing body of research has zeroed in on effective strategies for boosting successful reentry and reducing the rates at which offenders return to crime. Research has identified several key strategies for changing offender behavior, including: 1) focus supervision and treatment resources on high-risk offenders; 2) frontload resources to the initial period of offenders' supervision in the community; 3) tailor conditions of supervision to offenders' individual criminal risk factors; 4) combine evidence-based programming designed to change offenders' behavior with monitoring and surveillance; and 5) incentivize offenders' behavior by applying swift, certain, and proportional responses for violations and rewards for compliance.

Focus supervision and treatment resources on high-risk offenders: Many states have adopted the use of validated risk and needs assessment tools to identify offenders' likelihood of recidivism and allocate resources accordingly. Using a validated risk assessment, supervision agents can focus their oversight and resources on those who pose the highest risk of reoffending, a practice that provides the biggest return on investment. The use of a needs assessment also helps agents target offenders' criminogenic needs (those changeable attributes such as antisocial attitudes and behavior, unstable employment and housing, and substance abuse) that can be targeted, and when addressed, can reduce an offender's risk of recidivism.²⁵

Frontload resources to the initial period of offenders' supervision in the community: Frontloading resources is a cost-effective approach because the majority of people who reoffend do so within a year of release.²⁶ For this reason, it is important to focus community supervision and support services in the first days, weeks, and months after an inmate's release.

Tailor conditions of supervision to offenders' individual criminal risk factors: Traditionally, probation and parole supervision has focused on surveillance and sanctioning in order to catch or interrupt negative behavior. However, research shows that incorporating assessment-driven supervision and case management practices, rather than using surveillance alone, can achieve better supervision outcomes.²⁷ Assessment-driven case management provides a shift from traditional supervision and case management practices to a renewed focus on reducing recidivism and improving offender outcomes. The results of a validated risk and needs assessment should be used to determine the appropriate supervision intensity for an offender and to guide the development of individualized, targeted case plans that address an offender's criminogenic needs and responsivity factors.

Combine evidence-based programming designed to change offenders' behavior with monitoring and surveillance: To reduce recidivism and modify offender behavior, treatment must be integrated with standard supervision practices of monitoring and reporting. Research has shown that treatment that targets an offender's assessed criminogenic needs can greatly reduce recidivism. Addressing those specific factors that are associated with an offender's risk to reoffend has a measurable impact on the future behavior and successful reintegration of the offender. Conversely, surveillance-oriented supervision without treatment underperforms when compared with supervision that integrates treatment in terms of reducing recidivism.²⁸

Incentivize offenders' behavior by applying swift, certain, and proportional responses for violations and rewards for compliance: Behavior change research also demonstrates that offenders are more responsive to sanctions (or incentives) that are swift and certain rather than those that are delayed and inconsistently applied, no matter how severe. Swift and certain responses work both because they help offenders see the response as a consequence of their behavior rather than a decision levied upon them, and because offenders heavily weigh the present over the future (consequences that come months and years later are steeply discounted). Certainty establishes a credible and consistent threat (or promise), creating a clear deterrent (or incentive) due to the definite nature of the response.²⁹ Many states and localities have applied this research by creating a pre-defined set of sanctions and incentives which can be applied swiftly and certainly in response to offender behavior. For example, earned discharge policies can encourage offenders to comply with the rules of supervision, and at least 14 states have adopted or expanded such policies. In addition to improved compliance, earned discharge policies reduce caseloads and allow supervision agents to focus their time and attention on higher-risk offenders.

Maryland's Use of Best Practices in Community Supervision

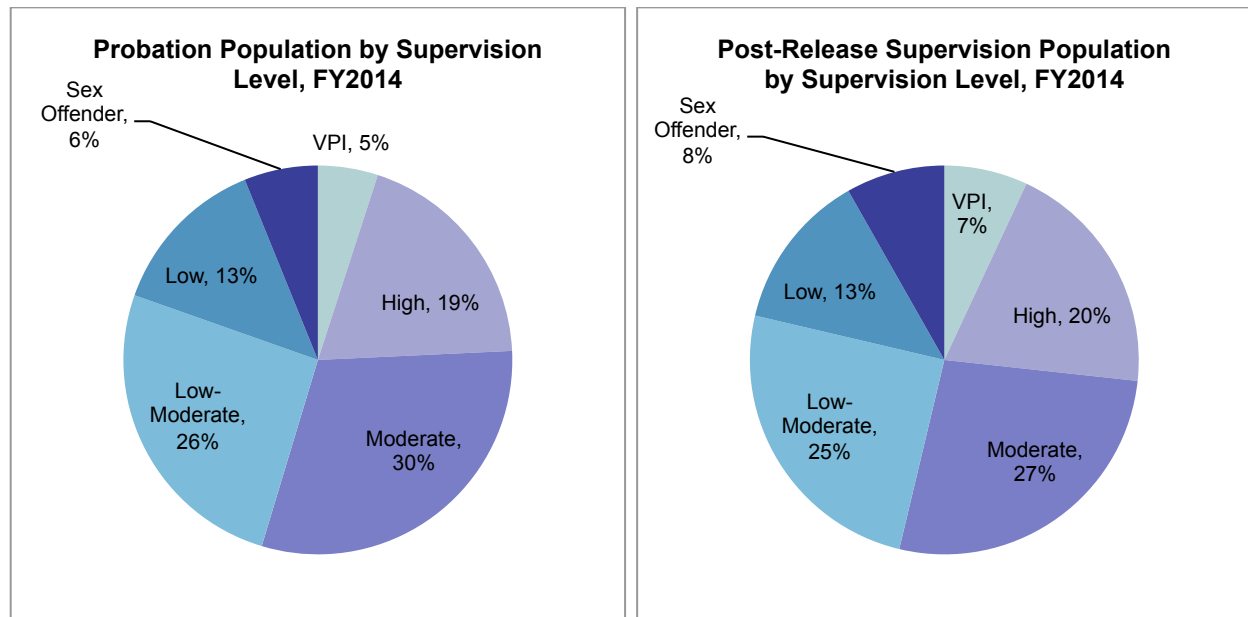
Incarceration typically costs states more than supervision, and Maryland is no different. The daily cost of incarcerating an individual in Maryland (\$25.63) is more than five times higher than the daily cost of community supervision (\$4.55). While there are over twice as many people on supervision as there are incarcerated, nearly 60 percent of the FY2016 corrections budget went to correctional institutions and only seven percent to community supervision.^{iv}

The Council reviewed how Maryland's community supervision system stacks up when compared to the body of research on best practices. First, the Council noted many areas in which Maryland has improved supervision practices to better align with the research. For instance, the Division of

^{iv} The calculation of correctional institution costs does not include costs associated with local detention facilities, including the Baltimore City Detention Center.

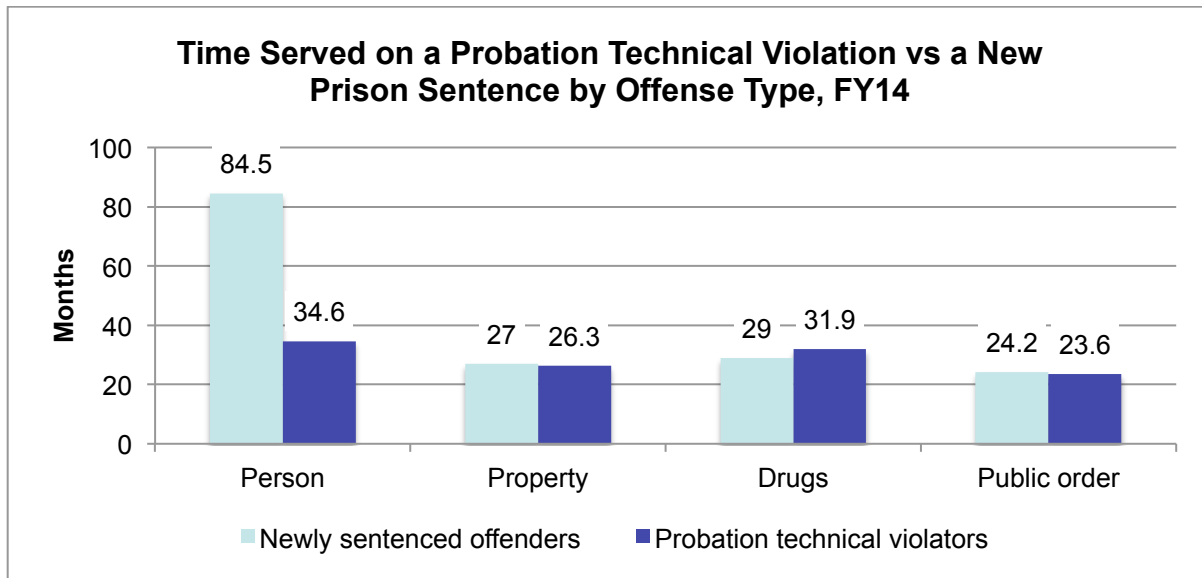
Parole and Probation now uses a risk and needs assessment tool to help tailor supervision to each offender's specific needs. Second, the failure rate for supervision cases has declined over the last decade from 46 percent to 38 percent. Third, over 80 percent of supervision cases are closed without a new criminal conviction.

However, the Council also identified some areas for potential improvement. Maryland may not be targeting its supervision resources to the offenders at the highest risk of reoffending. Seventy percent of the probation population is classified as low or moderate risk, along with 65 percent of the post-release supervision population, including parolees and offenders released from prison to mandatory release supervision. In addition, low-risk offenders serve considerably longer on parole and mandatory supervision than high-risk offenders prior to a successful discharge.



Despite research demonstrating that swift, certain, and proportional sanctioning is more effective at reducing recidivism than delayed, inconsistent, and severe sanctioning, probation revocations to prison served an average of 43.9 months in FY2014, up 25 percent since FY2005.³⁰ Probation technical violators served an average of 31 months, longer than many offenders sentenced directly to prison.

The ability to combine treatment with supervision requires access to evidence-based treatment. The Council saw data from the Substance Abuse and Mental Health Administration revealing that only 42 percent of individuals in Maryland with a mental illness received treatment between 2009 and 2013. Access to the treatment resources that do exist varies widely across the state. Problem-solving courts for adult offenders, such as drug courts, mental health courts, and veterans' courts, do not exist in seven of Maryland's 24 jurisdictions.



Policy Recommendations

Over the last six months, the Council analyzed the drivers of Maryland's prison population, reviewed research on evidence-based strategies to reduce recidivism, and studied criminal justice innovations in other states. Based on that data and research, the Council developed a comprehensive, tailored package of sentencing and corrections policies. These recommendations will:

- Focus prison beds on serious and violent offenders,
- Strengthen probation and parole supervision,
- Improve and enhance release and reentry practices,
- Support local corrections systems, and
- Ensure oversight and accountability.

Focus Prison Beds on Serious and Violent Offenders

Recommendation 1: Revise drug possession penalties to maximize recidivism reduction

Drug offenders remain a significant driver of Maryland's prison population. Drug possession is one of the top 10 offenses at admission. In FY2014, 261 possession offenders were sent to prison from the courts (144 sentenced directly and 117 through probation revocations). Research suggests that a high percentage of criminal justice-involved individuals suffer from substance abuse and mental health disorders requiring treatment and support.³¹ While prison may provide access to substance abuse treatment, it is not the most cost-effective environment in which to deliver it.³² Further, research indicates that incarcerating drug offenders can actually increase the likelihood they will recidivate once they leave prison. This is because prison can exacerbate the criminal risk factors that drive recidivism by expanding the sphere of antisocial influences.³³

The Council recommends

- Restructuring the penalties for drug possession to direct more offenders into evidence-based supervision and treatment in the community based on a needs assessment. Substance abuse treatment and supervision shall be provided in lieu of incarceration unless there is evidence of an imminent threat to public safety, according to the following schedule:

Drug possession, non-marijuana		
Current law	Council recommendation ^v	
0-4 years	1 st conviction	Presumptive treatment and probation; or up to 12 mos. incarceration
	2 nd and 3 rd convictions	Presumptive treatment and probation; or up to 18 mos. incarceration
	4 th and subsequent convictions	Presumptive treatment and probation; or up to 24 mos. incarceration

- For marijuana possession offenders, authorizing the court to impose no more than a six-month sentence for the first conviction and increasing the maximum term for the second and any subsequent convictions to 12 months.
- Requiring the Department of Public Safety and Correctional Services to conduct substance abuse screenings or assessments on all drug possession offenders. If incarceration is part of the sentence, require the Division of Correction, or jail as applicable, to assess the offender for substance abuse treatment needs and to provide treatment per the needs identified in the assessment, which could be offered either in prison, jail, or during the term of supervision. If the sentence is probation without incarceration, require the Division of Parole and Probation to assess the offender for substance abuse treatment needs and to provide treatment in the community per the needs identified in the assessment.
- Tasking the Governor's Office of Crime Control and Prevention with coordinating a substance abuse and mental health treatment gap analysis in coordination with the Department of Public Safety and Correctional Services, the Department of Health and Mental Hygiene, the courts, public health and treatment professionals, and local corrections authorities to determine the gap between offender treatment needs and available treatment services. This study shall include a feasibility study of local jail and service provider capacity for substance use and mental health disorder and related treatment.

^v Some members of the judiciary expressed concerns that the range of potential sentences would not enable the courts to enforce treatment mandated as a condition of probation.

Recommendation 2: Require prompt placement in residential drug treatment beds

If it is found that a defendant is in need of substance abuse treatment, a judge can sentence the offender under 8-507^{vi}, which provides both residential and outpatient drug treatment. Residential drug treatment beds ordered through 8-507 are limited and the Council found that offenders ordered to 8-507 beds are waiting in prison or jail prior to placement for an average of 167 days.

The Council recommends

- Requiring the Department of Health and Mental Hygiene to promptly place offenders sentenced to residential drug treatment (8-507) beds.
- If the offender is not placed promptly, the Department of Health and Mental Hygiene may be called to court to explain the reason for the lack of placement.

Recommendation 3: Eliminate disparity between crack and powder cocaine penalties

Many jurisdictions distinguished between crack and powder cocaine in their sentencing systems based on the belief that crack cocaine was more dangerous. However, research has since demonstrated that the distinction between crack and powder cocaine was overstated and has also contributed to disparities in sentencing between black and white offenders.³⁴ Many states and the federal government have taken steps to mitigate or eliminate the disparity in penalties for the two forms of the drug.

The Council recommends

- Eliminating the distinction between the amount of crack cocaine and powder cocaine that triggers a mandatory five-year prison term for volume dealers and a mandatory 20-year prison term for drug kingpins by aligning the threshold triggering the mandatory sentence at 448 grams for crack and for powder cocaine.

Recommendation 4: Raise the felony theft threshold and concentrate longer prison terms on higher-level theft offenders

Felony theft remains one of the top 10 offenses at admission, with 347 offenders entering prison from the courts in FY2014 (221 sentenced directly and 126 as probation revocations). In addition, misdemeanor theft continues to send many offenders to prison: 119 in FY2014 (80 directly and 39 as probation revocations).

One recent analysis found that increasing the felony theft threshold, the dividing line at which the vast majority of property crimes are categorized as felonies as opposed to misdemeanors, does not lead to higher property crime rates. Between 2001 and 2011, 23 states raised their felony theft thresholds. The analysis found that the change in thresholds had no statistically significant impact, up or down, on the states' overall property crime or larceny rates. Additionally, the study found no

^{vi} Md. Health-General Code Ann. § 8-507

correlation between the amount of a state's felony theft threshold—whether it is \$500, \$1,000, or \$2,000—and its property crime rates.³⁵

The Council recommends

- Raising Maryland's felony theft threshold from \$1,000 to \$2,000 and increasing the penalties along with the value of the property involved in the theft according to the following schedule:

Theft and related offenses			
Current law		Council recommendation	
<\$100	0 – 90 days	<\$100	up to 90 days
<\$1,000	0 – 18 mos	\$100 - \$1,999	up to 12 mos.
<\$1,000 2 nd and subsequent	0 – 5 yrs		
\$1,000 - \$10,000	0 – 10 yrs	\$2,000- \$24,999	up to 5 yrs.
\$10,000 - \$100,000	0 – 15 yrs	\$25,000- \$99,999	up to 10 yrs.
\$100,000 +	0 – 25 yrs	\$100,000 +	up to 20 yrs.

- Applying these penalties to all subsequent offenses.
- Applying the change to the felony theft threshold to the related property crimes including bad checks, identity fraud, and exploitation of vulnerable adults.

Recommendation 5: Expand in-prison good behavior and program incentive credits

Research demonstrates that providing incentives like earned time or diminution credits in prison can reduce recidivism and save taxpayer dollars.³⁶ In Maryland, most offenders can earn up to 10 days per month of diminution credits for good behavior. Many drug offenses are restricted to earning five days per month rather than the 10 days available to other nonviolent inmates. Offenders serving time in jail are also restricted to earning five days per month rather than the full 10 days. In addition, Maryland offers modest, one-time credits for participating in programs intended to reduce recidivism.

The Council recommends

- Allowing nonviolent drug offenders to earn up to 10 days of diminution credits per month, as is available to all other nonviolent offenders.
- Providing increased incentives (an additional 10 days per month enrolled in the program) for nonviolent offenders engaged in programming such as education, workforce

development, cognitive-behavioral therapy, or substance abuse therapy as well as eligibility for early parole release upon completion.

- Allowing offenders in jail to earn equivalent good time credit as they would in prison, depending on their offense type rather than where they are held in custody.

Recommendation 6: Retroactive application of the mandatory minimum safety valve

During the 2015 legislative session, the General Assembly passed a “safety valve” for mandatory minimum sentences for drug offenses. The safety valve allows courts to sentence beneath the mandatory minimum if “giving due regard to the nature of the crime, the history and character of the defendant, and the defendant’s chances of successful rehabilitation: (1) the imposition of the mandatory minimum sentence would result in substantial injustice to the defendant; and (2) the mandatory minimum sentence is not necessary for the protection of the public.”³⁷ The safety valve applies to all offenders sentenced on or after the enactment of the new law but does not apply to those sentenced to mandatory minimums prior to the new law.

The Council recommends

- Allowing all offenders sentenced to mandatory minimums for drug offenses eligible for the safety valve, prior to the 2015 law change, to apply for resentencing under the safety valve. Proper motions or applications will need to be filed within one year of the bill’s effective date in order to be considered or an offender must show good cause as to why it cannot be filed within the year.
- Shifting the presumption in the safety valve retroactively and prospectively such that the burden is on the state to argue for the mandatory minimum rather than on the defendant to argue for the safety valve.

Recommendation 7: Expand alternatives to incarceration in the sentencing guidelines and include suspended sentences in calculating guideline compliance

Maryland’s sentencing guidelines are voluntary and only apply to criminal cases prosecuted in circuit court. In FY2014, 74 percent of offenders sentenced under the sentencing guidelines received a guidelines-compliant sentence. An additional 21 percent received a sentence below guidelines. Offenders can also receive a suspended sentence, which the Sentencing Commission does not consider in calculating guidelines compliance. In FY2014, 66 percent of offenders sentenced under the guidelines received a suspended sentence in addition to or in lieu of an incarceration sentence. Of these offenders, 56 percent received a suspended sentence above the guidelines range (i.e. a sentence that would not be considered compliant if it were included in the compliance calculations).

Over the last decade, there has been an increase in the number of offenders receiving an incarceration sentence with a suspended sentence and probation to follow their prison term (58 percent in FY2014, up from 45 percent in FY2005).

Further, suspended sentences for offenders sentenced to probation without incarceration time have declined 25 percent, suggesting that suspended sentences are not necessarily being used as an alternative to incarceration, but rather as an extension of supervision and punishment for offenders already sentenced to prison.

Many sentencing guidelines carry presumptive incarceration sentences even for lower-level, nonviolent offenses. In order to impose an alternative to incarceration, judges must sentence outside of the guidelines.

The Council recommends

- Requiring that the suspended portion of a sentence be included in the determination of whether a sentence is compliant with sentencing guidelines.
- Establishing more alternatives to incarceration in the guidelines.

Recommendation 8: Identify best practices in alternative dispute resolutions

Alternative Dispute Resolution is a mediation and restorative justice model for settling a civil or criminal case in Maryland. Currently, most of these services are focused in civil courts, though 12 out of 24 Maryland jurisdictions offer some form of mediation for certain criminal misdemeanors at the district court level.

While this mediation in civil court cases is regulated by statewide standards including quality assurance and evaluation, no similar standard of regulation exists for mediation in criminal proceedings.

The Council recommends

- Requiring that the Judiciary's Mediation and Conflict Resolution Office identify best practices for criminal referrals to mediation, based on experience across the state and research.

Strengthen Probation and Parole Supervision

Recommendation 9: Use a validated risk and needs assessment tool to determine supervision levels

Currently, the Division of Parole and Probation focuses many of its supervision resources on low- and moderate-risk offenders rather than on high-risk offenders who are the most likely to reoffend. Seventy percent of probationers and 65 percent of the post-release supervision population are on moderate- or low-risk supervision. Research shows that it is more effective to focus supervision resources on offenders who are most likely to recidivate.³⁸

The Council recommends

- Requiring that the Division of Parole and Probation use a validated risk and needs assessment tool to guide supervision intensity, case planning, and treatment and programming referrals.
- Requiring the Division of Parole and Probation to have an independent validation study conducted every three years on its risk and needs assessment tool to ensure it continues to accurately predict recidivism.

Recommendation 10: Use swift, certain, and proportional sanctions for violations of probation and parole

Probation and parole agents do not have a standardized framework to encourage prosocial behavior through the use of incentives or for responding to technical violations of the terms and conditions of community supervision, such as missing a treatment appointment or failing a drug test. Research shows the benefits of incentives to encourage positive behavior as well as the use of swift, certain, and proportional sanctions to discourage antisocial behavior and criminal activity.³⁹

Almost 60 percent of all prison admissions represent failures of probation, parole, or mandatory release supervision, often for technical violations rather than a new criminal conviction. Some practices like “zero tolerance” supervision under the Violence Prevention Initiative are inconsistent with swift, certain, and proportional principles. Finally, nonviolent probationers revoked for technical violations often serve just as long, or longer, than offenders sentenced directly to prison.

The Council recommends

- Defining “technical violations” as any violation that does not include an arrest, a conviction, a violation of a no contact order, or failure to participate in a required domestic abuse intervention program.
- Requiring that the Division of Parole and Probation respond to technical violations using swift, certain, and proportional sanctions in compliance with a statewide graduated sanctions matrix. The matrix will include a graduated system of sanctions that includes verbal warnings, increased reporting, referral to day reporting centers, and increased drug and alcohol testing, among others. The matrix will also include a graduated system of incentives for responding to prosocial behavior that includes verbal recognition, reduced reporting, and credits for early discharge. Probation and parole agents will be required to exhaust the response options in the graduated matrix before pursuing the formal revocation process. Any sanction that involves incarceration will require judicial approval.
- Capping the length of stay for offenders revoked for technical violations up to 15, up to 30, and up to 45 days for the first, second, and third revocation, respectively. The judge or Parole Commission will be able to impose up to the remainder of the full sentence for any subsequent revocations.

Recommendation 11: Establish evidence-based standards for supervision practices

In the last several decades, the body of research on what works to reduce recidivism has grown significantly. States investing their resources in policies and practices that adhere to the research on what works have realized a greater public safety return on their correctional investments.

The Council recommends

- Defining “evidence-based programs and practices” in statute as programs demonstrated through rigorous evaluation to reduce recidivism.
- Defining “innovative programs and practices” as those that might not meet the standard of evidence-based practices but that are promising based on preliminary research or data.
- Requiring that the Division of Parole and Probation use evidence-based practices and innovative programs and practices in its supervision practices.

Recommendation 12: Strengthen the earned compliance credits program

Earned compliance credits can provide a powerful incentive for offenders to participate in programs, obtain and retain jobs, and remain drug- and alcohol-free.⁴⁰ As compliant and low-risk offenders earn their way off supervision, supervision agencies/agents can focus limited resources on higher-risk offenders. While earned compliance credits can be awarded under current policy in Maryland, agents are not required by policy or statute to inform offenders of their eligibility, thereby reducing the value of the incentive or the likelihood that credits are received. Many nonviolent offenses are disqualified from eligibility, and incentives are not used consistently.

The Council recommends

- Allowing probationers, parolees, and mandatory releasees who have earned enough credits to satisfy their active term of supervision to be automatically transferred to unsupervised probation or parole, after which they will not be required to report or pay fees.
- Expanding eligibility for earned compliance credits to commercial drug offenders (currently ineligible for any earned compliance credits) so that these offenders’ periods of supervision may be reduced by 20 days for each month of compliance while under supervision.
- Further clarifying the earned compliance credits program in statute to provide consistency in application.
- Requiring that the Department of Public Safety and Correctional Services develop an automated application for the tracking and awarding of earned compliance credits by the Division of Parole and Probation.

Improve and Enhance Release and Reentry Practices

Recommendation 13: Streamline parole and focus parole hearings on serious, violent offenders and on non-compliant nonviolent offenders

While the percentage of offenders released to parole has increased in the last 10 years, it remains under 40 percent. When offenders are granted parole, they serve an average of nine months past their eligibility date. The Council discussed the importance of providing incentives for participation in recidivism reduction programming, allowing the Parole Commission to focus on the most serious and complex cases, and reducing unnecessary delays in order to address this issue.

The Council recommends

- Creating an administrative parole process for nonviolent, parole-eligible offenders based on the results of a validated risk and needs assessment administered at the time of commitment for the purpose of developing individualized case plans that are achievable by the parole eligibility date.
- Notifying victims, where applicable, of the parole release date and providing them with an opportunity to request a hearing.
- Providing for the administrative release of nonviolent, parole eligible offenders on their parole eligibility date if the offender successfully completes their individualized case plan, subject to the restrictions stated below.
- Restricting parole hearings to all violent offenders; or to nonviolent offenders^{vii} who have either failed to comply with their case plans or committed a serious infraction in the 30 days prior to the offender's parole eligibility date; or, if a parole hearing was requested by the victim.

Recommendation 14: Expand eligibility for geriatric parole

The number of prisoners over the age of 55 has nearly doubled in the last 10 years to 1,875. Geriatric prisoners are often the most expensive inmates (because of their higher medical costs) and also the lowest risk (because they have "aged out" of their crime-committing years). Currently, offenders eligible to petition for geriatric parole must be at least 65 and have served at least 15 years for a crime of violence.

The Council recommends

- Expanding geriatric parole to allow all offenders age 60 and over who have served 10 or more years or one-third of their total sentence to petition for parole. This recommendation will not apply to any sex offender with a registerable offense.

^{vii} The impact of the policy was based on using the Parole Commission's definition of crimes of violence, Md. Correctional Services Code Ann. §7-101 (Definitions).

Recommendation 15: Expand the use of medical parole

Medical care comes at a considerable expense to correctional institutions that were not designed for that purpose. As prison populations age and prisoner health declines, more appropriate institutions that are equipped to address their health care needs can be utilized to lessen the expense to the state.

The Council recommends

- Requiring that a petition for medical parole, regardless of the petitioner, include two medical evaluations by medical authorities that are independent from the Division of Correction at no cost to the offender.
- Requiring that medical parole eligibility be based on a permanent medical or mental health condition, disease, or syndrome.

Recommendation 16: Establish a certificate of completion for offenders who successfully complete supervision

Many professional licenses are unattainable for offenders with criminal convictions. In order to support effective reintegration into the community, reduce recidivism, and incentivize supervision completion, a number of states have authorized a releasing authority to issue a certificate of rehabilitation for offenders who have successfully completed probation or parole to assist the offender in restoring certain licensures.⁴¹

The Council recommends

- Allowing first-time nonviolent and non-sex offenders to apply for a certificate of completion to restore their rights to obtain professional certifications.
- Requiring that the Division of Parole and Probation establish an application and review process for the certificate of completion that allows the sentencing judge, state's attorney, or victim, where applicable, to object to the reinstatement of the certification.

Support Local Corrections Systems

Recommendation 17: Make certain first-time, minor traffic offenses non-jailable

Under Maryland law, many transportation and licensing offenses carry the possibility of jail time, even for conduct that may not represent a threat to public safety. Operating a motor vehicle with a suspended license, for example, carries a maximum sentence of two months in jail. In FY2014, 16.5 percent of jail sentences in Baltimore City were for operating a motor vehicle with a suspended license, representing 11.8 percent of the under-12-month local prison population. Suspended licenses can result from a wide variety of non-criminal violations.

The Council recommends

- Eliminating jail as a penalty for first-time driving while suspended and driving without a license offenses.

Recommendation 18: Establish a performance-incentive county grant program

Council members, criminal justice stakeholders, and members of the public who testified at four separate public hearings across the state discussed the dearth of local services and programs to reduce recidivism and corrections costs. This shortfall at the local level often makes prison the only viable sentencing option.

Furthermore, counties, judicial districts, and local providers are often best suited to identify the correctional programming, treatment, and services that would best supervise and serve their offender populations. With this in mind, some states have created performance-incentive grant programs to support counties in their efforts to reduce recidivism and corrections costs.

The Council recommends

- Establishing a performance-incentive grant fund available for counties with proposals to reduce recidivism and control corrections costs. The proposals can include, but are not limited to, investing in pretrial risk assessments or services to reduce pretrial detention, diversion programs like restorative justice or mediation, sentencing alternatives like specialty courts, or reentry programs. The fund will be administered by a board with representation from each jurisdiction and the board will create performance measures to assess the effectiveness of the grants. No less than five percent of the fund will be designated for victim services.

Ensure Oversight and Accountability

Recommendation 19: Establish an oversight council and track performance

The reforms to Maryland's corrections and criminal justice systems will require careful implementation and oversight. Moreover, additional legislative and administrative reforms may be needed after implementation to enable the state to realize the goals of justice reinvestment. Several states that have enacted similar comprehensive reform packages, including Georgia, South Carolina, and South Dakota, have mandated data collection on key performance measures and required oversight councils to track implementation, report on outcomes, and recommend additional reforms if necessary.

The Council recommends

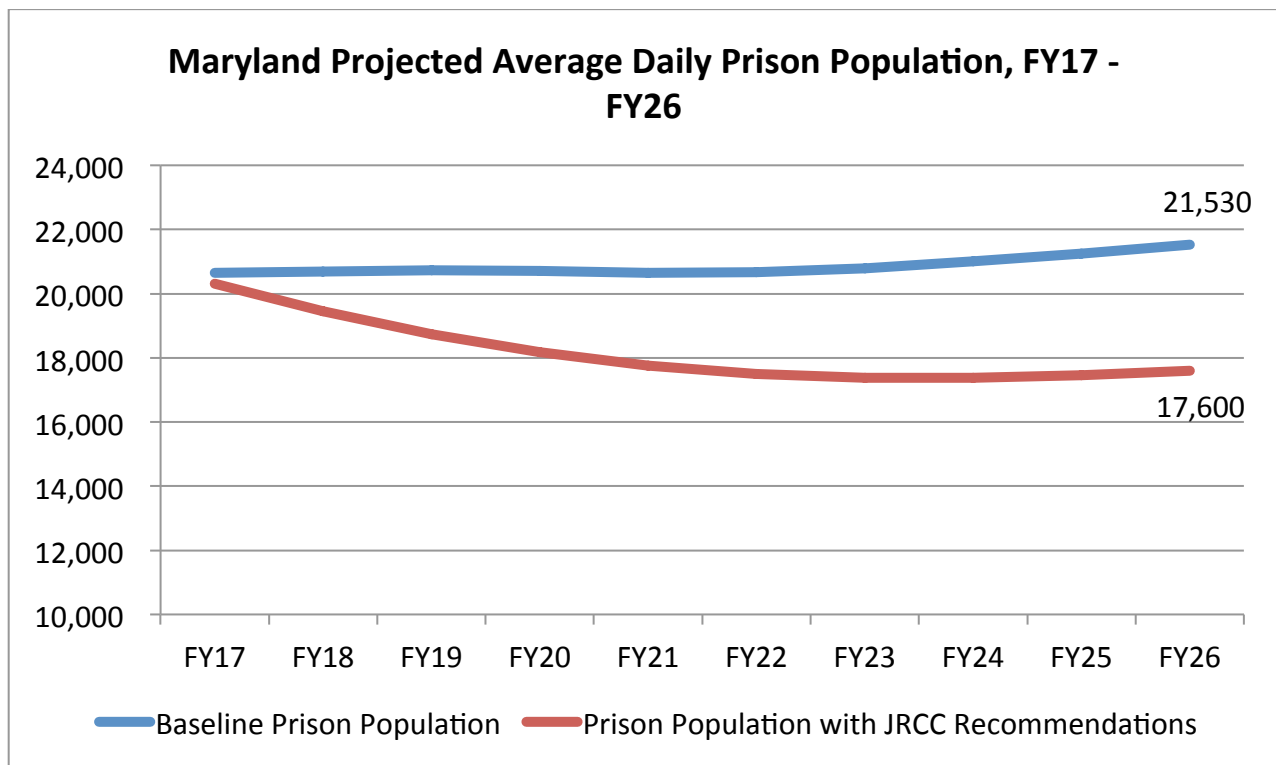
- Establishing an Oversight Council, housed within the Governor's Office of Crime Control and Prevention, comprised of key stakeholders from the legislative, executive, and judicial branches as well as criminal justice practitioners and supported by research entities like the University of Maryland's Maryland Data Analysis Center that can collect and interpret data. Require the Oversight Council meet at least twice per year specifically to monitor the

reforms, report back to the General Assembly on implementation efforts, and make additional legislative and budgetary recommendations for future data-driven, fiscally sound criminal justice policy changes.

- Requiring the Department of Public Safety and Correctional Services, the Parole Commission, and the Administrative Office of the Courts to collect and report data to the Oversight Council on key performance measures relevant to the implementation and effectiveness of the policy changes recommended in this report. This would include, but is not limited to: admissions, length of sentence, length of time served, current prison population and demographic data.
- Requiring local corrections agencies and the Administrative Office of the Courts to collect data for the purposes of better understanding the pretrial population, including the number of pretrial defendants detained on the same day each year, the length of time they have spent pretrial, the reasons they are unable to secure release, and case dispositions. Require the data to be reported annually to the Oversight Council.

Projected Impact of Policy Recommendations

Taken together, the recommendations from the Justice Reinvestment Coordinating Council will reduce the state's prison population 14 percent from its current level, bringing the population down to 17,600 by 2026. Maryland taxpayers will realize \$247 million in savings over the next decade.



Reinvestment Priorities

The Council strongly recommends that savings from averted prison costs be reinvested in the following six ways. Further, the Council recommends that an appropriate statutory provision be enacted to protect the savings in corrections spending.

Reinvesting in treatment

The Council heard extensive testimony from judges and other practitioners about the gap between the treatment needs and the treatment resources available statewide. Shortfalls in substance abuse treatment, mental health treatment, and other proven interventions were identified both for offenders in prison and those offenders on supervision in the community.

The Council recommends

- Increasing funding to the Department of Health and Mental Hygiene to expand the use of 8-507 drug treatment beds.
- Increasing funding to the Division of Correction to expand treatment and programming within institutions.
- Increasing funding to the Division of Parole and Probation to expand treatment and programming in the community, including day reporting centers and drug courts.

Reinvesting in a county performance-incentive grant program

Council members, criminal justice stakeholders, and members of the public who testified at four separate public hearings across the state discussed the dearth of local services and programs to reduce recidivism and corrections costs. This shortfall at the local level often makes prison the only viable sentencing option.

Furthermore, counties, judicial districts, and local providers are often best suited to identify the correctional programming, treatment, and services that would best supervise and serve their offender populations. With this in mind, some states have created performance-incentive grant programs to support counties in their efforts to reduce recidivism and corrections costs.

The Council recommends

- Funding a performance-incentive grant fund, based on Recommendation #18 in this report, which is available for county-led innovations that reduce recidivism and control corrections costs.

Reinvesting in restitution collection processes for victims of crime

Many victims and survivors are underserved by the criminal justice system. To include the voices of crime victims and victim advocates in the assessment of Maryland's criminal justice system, as well as in the process of developing recommendations for legislative and budgetary changes, two Survivor-Victim Roundtables were held, one in Millersville focused on survivors of crime, and a second gathering in Upper Marlboro focusing on victims' needs. Discussion at both Roundtables focused on the challenges of effective restitution collection and management and elevated it as a top priority for restorative justice as well as a means of holding offenders accountable.

The Council recommends

- In cases where there is unpaid restitution to an identifiable victim, directing 25 percent of inmate earnings to restitution payments, to begin after \$50.00 has been acquired in the reserved account. Any child support payments shall have priority consistent with existing law.
- Collecting data and developing evidence-based practices for restitution collection and developing additional enforcement and data collection technology infrastructure.
- Tasking the Governor's Office of Crime Control and Prevention with identifying the appropriate agency to oversee restitution collection, making a recommendation by December 31, 2016, and requesting the Governor implement by executive order the transfer of restitution collection to the successor agency.

Reinvesting in reentry

Nearly all offenders entering Maryland prisons eventually return to their homes and communities. Over the last 30 years, a growing body of research has zeroed in on effective strategies for boosting successful reentry and reducing the rates at which offenders return to crime.

The Council recommends

- Expanding programming options for individuals leaving prison and reentering the community, including community-based employment, treatment, and housing services.
- Creating and funding Transition Coordinator positions to provide quality transition planning and support for high-risk offenders who are being released from prison, including, but not limited to, support with housing, employment, treatment, and family re-integration.
- Providing funds to support local detention centers that house offenders for the final months of their incarcerated terms in the counties to which they are returning. These funds will only be available to local detention centers able to provide reentry services such as assistance related to employment, housing, and medical coverage.

Reinvesting in beds for medical parolees

Fewer than 65 offenders in the last 10 years have been released on medical parole and the Council heard testimony from stakeholders and practitioners that one primary reason for this low release

rate was the difficulty the Department of Public Safety and Correctional Services has in identifying an appropriate place to transfer terminally ill inmates in the community.

The Council recommends

- Directing funds to provide for at least three medical beds for offenders on medical parole to address one of the biggest challenges faced by medical parolees, which is finding a facility that can maintain the required security level and address the offender's medical needs.

Reinvesting in training for criminal justice decision makers

Regular training ensures that criminal justice practitioners are using the most current research in the field on what works best to reduce recidivism and treat criminogenic needs.

The Council recommends

- Requiring annual trainings for probation and parole agents and supervisors, Parole Commission members, and hearing officers on evidence-based practices and decision-making. Training topics should include identifying, understanding, and targeting criminogenic risks and needs; principles of effective risk-reduction interventions; and how to support and encourage compliance and behavior change.

Additional Policy Options for Legislative Consideration

In addition to the consensus package of reforms above, the Council discussed the following three recommendations at length. While there was significant support for these recommendations, none of these policies achieved consensus support. The Council ultimately decided to forward these policies as additional options for legislative consideration.

Eliminating mandatory minimums for all drug offenses

Mandatory minimums were enacted in order to provide consistency in sentencing throughout the state and to provide a strong deterrent. A number of Council members expressed concerns regarding the use of mandatory minimums as a mechanism that puts the discretion in the hands of the prosecution, compels plea deals for defendants simply to avoid facing a mandatory minimum at trial even for highly defensible cases, and unfortunately fosters bias. Of the offenders sentenced to a mandatory minimum for a drug crime in FY2013 and FY2014, 81 percent were black.^{viii} The Council discussed several options for dramatically reforming mandatory minimums for drug offenders, including eliminating them entirely.

^{viii} 87 percent of the offenders currently in prison serving sentences of 10 years or more are black. This includes both offenders sentenced to mandatory minimums and offenders sentenced to non-mandatory sentences of 10 years or longer.

Enhancing the penalty for second degree murder from 30 to 40 years

In the Victim/Advocate Roundtables, participants voiced concerns that the current maximum penalty for second degree murder was not effectively holding homicide offenders accountable. The maximum penalty for first degree murder is life without parole and the maximum penalty for second degree murder is 30 years with parole eligibility at 50 percent of sentence served. The Council discussed increasing the maximum penalty for second degree murder to 40 years which would require that the defendant serve at least 20 years before becoming eligible for parole.

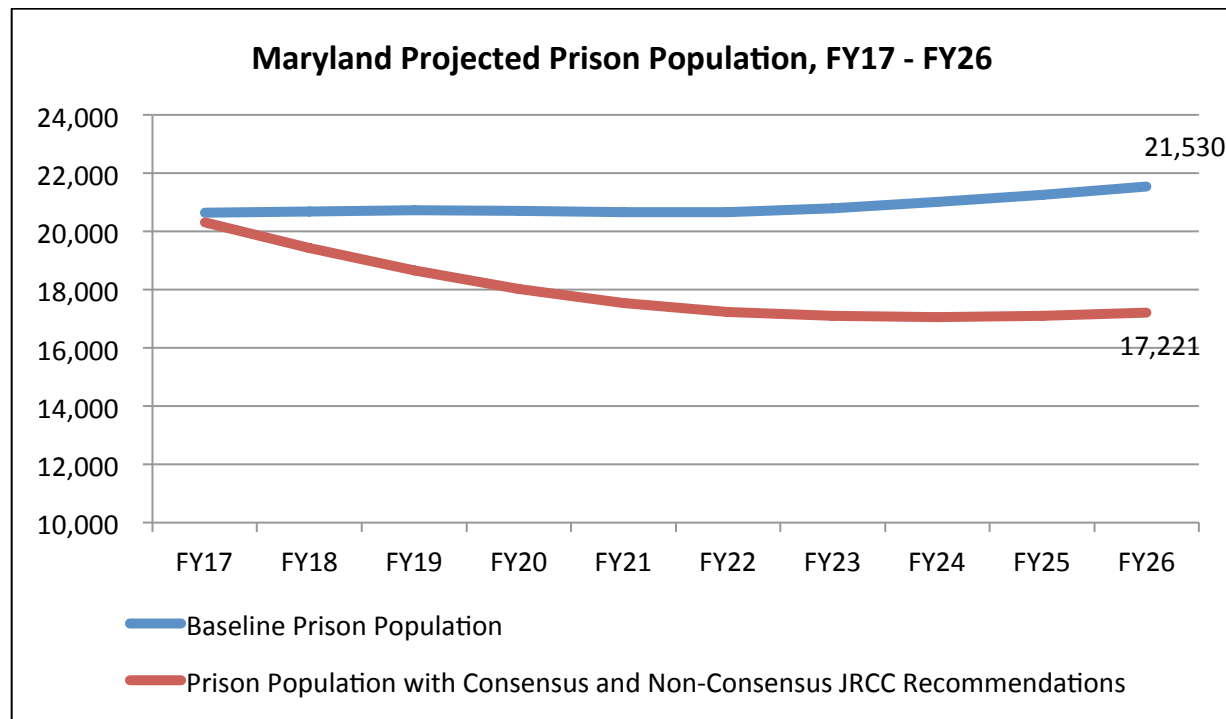
Revising commercial drug penalties

The offense of possession with intent to distribute narcotics (PWID) is the number one offense for which offenders are sentenced to prison. In FY2014, 462 people were sentenced to prison for PWID with an average sentence of 63 months. During that same period, 240 offenders were sentenced for distribution of narcotics, with an average sentence length of 75 months. In addition, 226 PWID offenders and 266 distribution offenders were revoked to prison from probation. Their average sentences were 73 and 78 months respectively, longer than those sentenced directly to prison. Based on that data and the research demonstrating that longer prison terms do not reduce recidivism, the Council discussed reducing the maximum sentences for commercial drug offenders with enhancements for repeat offenders in accordance with the following schedule.^{42,43}

Drug distribution Schedule I and II narcotic and hallucinogenic drugs			
Current law		Council consideration	
1st conviction	up to 20 yrs	1 st and 2 nd convictions	up to 5 yrs
2nd conviction	10-20 yrs (10 yrs mandatory minimum)		
3rd conviction	25 yrs mandatory minimum	3 rd conviction	up to 8 yrs
4th and subsequent conviction	40 yrs mandatory minimum	4 th and subsequent convictions	up to 10 yrs

Impact of Consensus Policies and Additional Options

Adding these three options to the full package will reduce the state's prison population 16 percent from its current level, bringing the population down to 17,221 by 2026. Maryland taxpayers will realize \$269 million in savings over the next decade.



ENDNOTES:

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